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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DISABILITY RIGHTS NEW JERSEY, et al.,  
Plaintiffs,

vs.

NEW JERSEY DEPARTMENT OF  
EDUCATION, et al.,  
Defendants.

Civil Action No. 07-2978 (MLC)

**CONSENT ORDER**

**THIS MATTER** having been opened to the Court by and with the consent of counsel for all parties; and the Court having considered the papers submitted in support of this application; and the Court having heard the arguments of counsel, if any; and good cause having been shown:

IT IS ON THIS 26<sup>th</sup> day of January, 2010,

**ORDERED** that, pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(9)(ii), the Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. § 1400, et seq., and N.J.A.C. 6A:32-7.5(e)(14), within seven (7) days of the date of this Order the Defendants and the Plaintiffs shall each post copies of the "Notice of Disclosure of Student Records" and the "Objection to Disclosure of Student Records" (in the form attached hereto as Exhibit A) on their respective websites, in a prominent location where these documents will be easily accessible to and viewable by the public in English and Spanish; and it is further

**ORDERED** that the Defendants and the Plaintiffs shall keep the "Notice of Disclosure of Student Records" and "Objection to Disclosure of Student Records" posted on their respective websites for thirty (30) days in order to permit time for parents and eligible students to object in writing via mail or electronic mail to the Disclosure of individual students' records; and it is further

**ORDERED** that the Defendants will provide copies of the "Notice of Disclosure of Student Records" and "Objection to Disclosure of Student Records," in both English and Spanish, to each school district, at the Defendants' expense, within seven (7) days of the date of this Order, and Defendants will direct each school district, within seven (7) days thereafter, to provide a copy of both documents in both languages to the parents of all special education students; and it is further

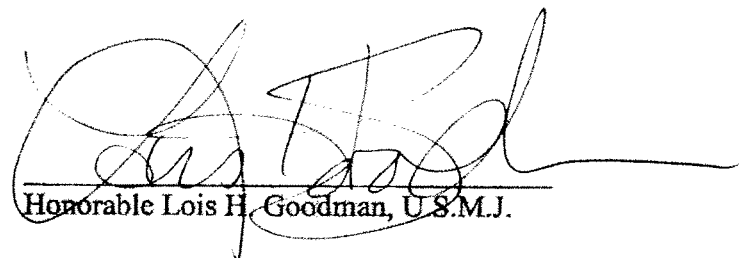
**ORDERED** that, after the time for objections to disclosure has elapsed, the Defendants shall produce all documents responsive to Plaintiffs' Document Request dated July 24, 2009, and Plaintiffs' First Set of Requests for Production of Documents Nos. 16, 19, 21 and 44 being withheld from disclosure by them as subject to and protected by FERPA, with the exception of the records regarding which Defendants have timely received a signed "Objection to Disclosure of Student Records" form; and it is further

**ORDERED** that as provided for in the Discovery Confidentiality Order in this case, the Student Records disclosed pursuant to this Order are to be used for purposes of this litigation only and must be either destroyed or returned to Defendants at the conclusion of this case; and it is further

**ORDERED** that if any party wishes to include any of the information disclosed pursuant to this Consent Order in any court filing, that party must first file a Motion to Seal pursuant the Local Rule 5.3 (to the extent that such a motion may be necessary after the Court rules on the pending motion to seal any and all student records from which the identity of a student can or might be determined); and it is further

**ORDERED** that, if the Court has previously held that any category of information contained in the student records disclosed pursuant to this Order shall be filed under seal, then an additional motion to file other documents in the same category under seal will not be necessary; and it is further

**ORDERED** that no names of minors, dates of birth, or social security numbers will be filed with the Court at any time.



Honorable Lois H. Goodman, U.S.M.J.

## EXHIBIT A

## **NOTICE OF DISCLOSURE OF STUDENT RECORDS**

This notice is being provided to you pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(9)(ii), a federal law that protects the privacy of student records, as well as the Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. § 1400, et seq., and N.J.A.C. 6A:32-7.5(e)(14). If you are the parent of a child with a disability attending school in New Jersey, or if you are a student with a disability who is eighteen (18) years of age or older, this notice may apply to you. Please read it carefully.

In the lawsuit entitled Disability Rights New Jersey, et al. v. New Jersey Department of Education, et al., Civil Action No. 07-2978, agencies that advocate on behalf of children with disabilities and their parents ("the Plaintiffs") have requested that the New Jersey Department of Education, its Commissioner and the State Board of Education ("the Defendants") disclose certain student records that may be relevant to the advocacy agencies' claims. All parties and the Court have agreed that the requested records should be disclosed to the advocacy agencies, subject to FERPA's requirements that this notice be provided in advance and that parents and eligible students be given the opportunity to object to disclosure. The Court entered an Order on January \_\_, 2010 directing that the requested records be disclosed after the time period for objections (listed below) has elapsed.

**INFORMATION THAT WILL BE DISCLOSED:** Information to be disclosed is limited to the student's gender; year of birth; ethnicity; race; county, district and school code for residence, receiving and attending; school entry date; year of graduation; referral date; date of parental consent to evaluate; initial IEP meeting date; whether parental consent was obtained to implement IEP; annual IEP review meeting date; special education classification; reevaluation date; initial process delay reason; special education placement; whether the student receives counseling services; occupational therapy services; physical therapy services; speech language services; and other related services. The information and documents may also include Individualized Education Programs (IEPs) for particular students, including name, date of birth, and evaluations pursuant to N.J.A.C. 6A:14-3.3 and N.J.A.C. 6A:14-3.4.

**CONFIDENTIALITY:** The Court has entered a "Discovery Confidentiality Order" in this matter that prevents the parties (and their representatives) from sharing confidential documents and information, such as student records, with anyone outside of the lawsuit for any purpose. At no time will the names of any minors, birth dates, or social security numbers be released to the public. In addition, Plaintiffs have applied to the Court for an order requiring that any document from which a student might be identified shall be filed with the Court "under seal," meaning that the document will not be disclosed to the public. The Discovery Confidentiality Order also requires that all confidential documents exchanged during the lawsuit be returned or destroyed after the lawsuit has concluded.

### **PARTIES:**

Plaintiffs: New Jersey Protection and Advocacy, Inc., The Education Law Center, The Statewide Parent Advocacy Network of New Jersey, and The Arc of New Jersey.

Defendants: New Jersey Department of Education, New Jersey State Board of Education, and Lucille E. Davy, in her capacity as Commissioner of Education.

**NATURE OF THE ACTION:** In this federal lawsuit, the advocacy agencies allege that the State has violated the Individuals with Disabilities Education Act ("IDEA") and other related laws by failing to educate children with disabilities in the "Least Restrictive Environment." The State denies these allegations.

### **WHY STUDENT RECORDS HAVE BEEN REQUESTED AND HOW THEY WILL BE USED:**

The advocacy agencies have requested certain student records as part of the "discovery" phase of the lawsuit, in which the parties exchange documents and information that tend to either prove or disprove the advocacy agencies' claims. The parties, their lawyers, and various experts employed by the parties may review the disclosed records in order to determine whether the NJ Department of Education is complying with IDEA. The parties may present some of the records to the Judge.

**OBJECTIONS TO DISCLOSURE:** If you believe that your child's records should not be disclosed, you must fill out the attached form, "Objection to Disclosure of Student Records," and mail it to Michael C. Walters, Deputy Attorney General, Department of Law and Public Safety, Division of Law, 25 Market Street, P.O. Box 112, Trenton, NJ 08625, by no later than February \_\_, 2010. You may also submit your objection, containing the same information as requested in the attached form, via electronic mail to [Ferpa.Objections@dol.lps.state.nj.us](mailto:Ferpa.Objections@dol.lps.state.nj.us), by no later than February \_\_, 2010. If your objection is not postmarked by February \_\_, 2010, the records listed above will be disclosed pursuant to the Court's Order. As noted above, all records disclosed during the lawsuit will be kept confidential and will be returned to the NJ Department of Education or destroyed after the lawsuit has concluded.

**OBJECTION TO DISCLOSURE OF STUDENT RECORDS**

I, the undersigned, being a parent/guardian, or an adult student who is eighteen (18) years of age or older, object to the disclosure by the New Jersey Department of Education of my/my child's student records in the lawsuit entitled Disability Rights New Jersey, et al. v. New Jersey Department of Education, et al., Civil Action No. 07-2978.

Name of Parent/Guardian: \_\_\_\_\_

Name of Student: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

County: \_\_\_\_\_

School District: \_\_\_\_\_

School: \_\_\_\_\_

Reason for Objection (optional) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Parent/Guardian or  
Adult Student

Date: \_\_\_\_\_

***This form (or the information contained in this form) must be sent via regular or electronic mail to Michael C. Walters, Deputy Attorney General, Department of Law and Public Safety, Division of Law, 25 Market St., P.O. Box 112, Trenton, N.J. 08625, [Ferpa.objections@dol.lps.state.nj.gov](mailto:Ferpa.objections@dol.lps.state.nj.gov), with a postmark no later than February \_\_\_\_\_, 2010, or your objection to disclosure will NOT be effective.***